

Remarks/Arguments

Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

Claims 1, 2 and 4-8 are pending. Claims 3 and 9-20 have been withdrawn as non-elected species and invention in view of the prior restriction requirement. In addition, the species olive oil has been considered herein as the first hair conditioning agent and the species almond oil has been considered as the third hair conditioning agent.

Claim 1 has been amended as further discussed below. No new matter is added by this amendment, support for which is found for example on page 1, line 33 to page 2, line 8, of the specification.

Applicants enclose herewith a copy of the Search Report referred to in the Information Disclosure Statement dated January 17, 2006. Applicants request that this be entered into the record.

Claim 1 as amended relates to a composition for conditioning the hair, said composition comprising: (i) a first hair conditioning agent, wherein said first hair conditioning agent is selected from the group consisting of avocado oil, apricot kernel oil, olive oil, sesame oil, coconut oil and PEG-7 olivate and penetrates into the core of the hair; (ii) a second hair conditioning agent, wherein said second hair conditioning agent is meadowfoam seed oil and penetrates into the cortex of the hair but does not substantially penetrate into the core of the hair; and (iii) a third hair conditioning agent, wherein said third hair conditioning agent is selected from the group consisting of PEG-8/SMDI copolymer, palmitoyl myristyl serinate, jojoba oil, almond oil, almond proteins, and sunflower oil and does not substantially penetrate into the cortex of the hair. The penetration characteristics of each of the first, second and third hair conditioning agents have been added to claim 1.

Claims 1, 2 and 4-8 stand rejected under 35 U.S.C §103(a) as obvious over the combination of US Patent Nos. 4,999,187 to Vernon and 5,843,193 to Hawkins et al. The Examiner argues Vernon discloses a hair treatment composition containing olive oil and almond oil, and that oils are known conditioning agents since they provide emolliency to the hair/scalp. The Examiner acknowledges that Vernon does not teach or suggest the use of meadowfoam seed oil, but argues this is taught by Hawkins et al., which disclose a hair dye that may optionally contain a fatty oil such as

meadowfoam seed oil. The Examiner argues it would have been obvious to add meadowfoam seed oil to the oils used by Vernon.

Applicants disagree. First, the claimed invention is a hair conditioner. Although Vernon relates to a hair treatment composition that may condition in addition to treating dandruff and growing hair, the Hawkins et al. patent relates to a hair dye. This is a different product category, as appreciated by one skilled in the art.

Second, the claimed composition requires three conditioning agents with three functions: one that penetrates into the core of the hair, one that penetrates into the cortex of the hair but does not substantially penetrate into the core of the hair, and one that does not substantially penetrate into the cortex of the hair. This is explicit in the claims. It is the result of applicants' recognition that different hair conditioning agents chemically affect the hair differently, and that by combining three hair conditioning agents with three different functions, a new and superior hair conditioning composition results. Applicants do not dispute that various oils such as those used herein are known in the art. However, identification of their chemical behavior and deliberate combination of them based on such chemical behavior is not found in the prior art.

Applicants therefore submit that the rejection under Section 103(a) should be withdrawn.

Claims 1, 2 and 4-8 have also been provisionally rejected for obviousness-type double patenting over claims 1, 2, 4-7 and 11-14 of commonly assigned US Patent Appln. S/N 10/674,715. Applicants will file an appropriate Terminal Disclaimer on the indication of allowable subject matter.

Reconsideration of the application is earnestly requested.

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